

RUSS, AUGUST & KABAT

1 RUSS, AUGUST & KABAT  
2 Marc A. Fenster, State Bar No. 181067  
3 [mafenster@raklaw.com](mailto:mafenster@raklaw.com)  
4 Matthew A. Rips, State Bar No. 175636  
5 [mrips@raklaw.com](mailto:mrips@raklaw.com)  
6 Brian D. Ledahl, State Bar No. 186579  
7 [bledahl@raklaw.com](mailto:bledahl@raklaw.com)  
8 12<sup>th</sup> Floor  
9 12424 Wilshire Boulevard  
Los Angeles, California 90025  
Telephone: (310) 826-7474  
Facsimile:(310) 826-6991

10 || Attorneys for Defendant Vedanti Systems Limited

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

16 MAX SOUND CORPORATION  
17 VEDANTI SYSTEMS LIMITED<sup>1</sup>  
Plaintiffs,

21 | Defendants.

Case No: 5:14-cv-04412-EJD

Honorable Judge Edward J. Davila

# **VEDANTI SYSTEMS LIMITED'S MOTION FOR MORE DEFINITE STATEMENT**

Date: May 21, 2015

Time: 9:00 a.m.

Place: Courtroom 4, 5<sup>th</sup> Floor

Judge: Hon. Edward J. Davila

<sup>26</sup> <sup>1</sup> The caption of this motion matches the caption in the First Amended Complaint (doc. 23).

1           **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2           PLEASE TAKE NOTICE that on May 21, 2015, at 9:00 a.m. or as soon  
3 thereafter as the matter may be heard in Courtroom 4 of the above-entitled Court,  
4 located at 280 South 1<sup>st</sup> Street, San Jose, California, Defendant Vedanti Systems  
5 Limited ("Vedanti") will move for a more definite statement as set forth below.

6           Pursuant to Federal Rule of Civil Procedure 12(e), Vedanti hereby moves  
7 for a more definite statement, on the ground that the First Amended Complaint  
8 (doc. 23) (the "FAC") filed by Plaintiff Max Sound Corporation ("Max Sound")  
9 against Vedanti (and other defendants) is so vague or ambiguous as it concerns  
10 Vedanti that Vedanti cannot reasonably be required to frame responsive pleadings  
11 to it.

12

13           **INTRODUCTION**

14           On January 23, 2015, Max Sound filed the FAC. The gravamen of the FAC  
15 is a patent infringement claim against Google, Inc., and two of its affiliates (the  
16 "Google Defendants"). The subject patent, United States Patent No. 7,974,339  
17 (the "339 Patent"), is owned by Vedanti. FAC, ¶ 5. The FAC identifies Vedanti as  
18 a defendant, but neither states a claim nor requests relief as against Vedanti. The  
19 FAC vaguely asserts that Vedanti "is listed as a named defendant in the event the  
20 Court deems [Vedanti] to be a necessary party in this action." FAC, ¶ 16. Max  
21 Sound states no position as to whether Vedanti actually is a necessary party.

22           By this motion, Vedanti seeks a more definite statement as to (i) what claims  
23 are asserted against Vedanti and what relief is sought against Vedanti, and/or  
24 (ii) whether Max Sound claims that Vedanti should be an involuntary plaintiff,  
25 and, if so, what facts render Vedanti a necessary party and justify compelling  
26 Vedanti to participate.

## 1                   ARGUMENT

2                   Motions for more definite statement attack unintelligible complaints. Under  
3                   Federal Rule of Civil Procedure 12(e), a party may move for a more definite  
4                   statement when the complaint against it “is so vague or ambiguous that [the] party  
5                   cannot reasonably be required to frame a responsive pleading.” A Rule 12(e)  
6                   motion is proper “where the complaint is ‘so vague or ambiguous that the opposing  
7                   party cannot respond, even with a simple denial, in good faith or without prejudice  
8                   to himself.’” *Neveu v. City of Fresno*, 392 F. Supp. 2d 1159, 1169 (E.D. Cal. 2005)  
9                   (emphasis added) (quoting *Cellars v. Pacific Coast Packaging, Inc.*, 189 F.R.D.  
10                  575, 578 (N.D. Cal. 1999)). Additionally, a Rule 12(e) motion is proper if a party  
11                  “cannot ascertain the nature of the claim asserted” against it. *Id.* (quoting  
12                  *Famolare, Inc. v. Edison Brothers Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal.  
13                  1981)). The motion is more likely to be granted where the complaint is so general  
14                  that ambiguity arises in determining not only the nature of the claim but even “the  
15                  parties against whom it is being made.” *Sagan v. Apple Computer, Inc.*, 874 F.  
16                  Supp. 1072, 1077 (C.D. Cal. 1994). Finally, “even though a complaint is not  
17                  defective for failure to designate the statute or other provision of law violated, the  
18                  judge may in his discretion, in response to a motion for more definite statement  
19                  under [Rule] 12(e), require such detail as may be appropriate in the particular  
20                  case.” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996).

21                  The FAC fails under these established principles. In order reasonably to  
22                  frame a responsive pleading, Vedanti is entitled to know what, if anything, is being  
23                  asked of it by the FAC. Max Sound should be required to replead its complaint  
24                  with the requisite detail.

25                  The FAC states a single cause of action for patent infringement. The cause  
26                  of action does not state whether it is asserted against all defendants, including

1 Vedanti, or merely against the Google Defendants. FAC, ¶¶ 61-75. Presumably,  
2 Max Sound does not assert that Vedanti is liable for infringement of Vedanti's own  
3 patent. Max Sound should be required to state what claims, if any, it asserts  
4 against Vedanti.

5 The FAC asks for myriad relief. Most elements of the requested relief are  
6 directed at the Google Defendants, while other elements are general in nature, such  
7 as “[a]ny and all such further necessary or proper relief as this Court may deem  
8 just.” FAC, p. 12. Whether Max Sound seeks relief against Vedanti by way of this  
9 general prayer is not clear. Max Sound should be required to state what relief, if  
10 any, it seeks against Vedanti.

11 More directly, the FAC offers statements of intent that, Vedanti “is named as  
12 a Defendant in this action as the owner of the ‘339 Patent’ and that Vedanti “is  
13 listed as a named defendant in the event the Court deems [Vedanti] to be a  
14 necessary party in this action.” FAC, ¶¶ 5, 16. Based on these statements, Max  
15 Sound appears to be conditionally suing Vedanti in case the Court might need  
16 Vedanti present. The FAC fails to assert that Vedanti is a necessary party or the  
17 factual basis that would make it so, and certainly does not explain why Vedanti  
18 ought to be regarded as a defendant—as someone against whom relief is sought.  
19 Max Sound should be required to state whether it alleges Max Sound is a necessary  
20 party, and, if so, the specific factual allegations that would justify such necessity.

21 It may be that Max Sound is attempting to compel Vedanti to participate in  
22 this action as an involuntary plaintiff. That possibility is suggested by the caption  
23 of the FAC, which lists Vedanti among the plaintiffs rather than the defendants.  
24 However, if Max Sound is attempting to compel Vedanti to participate as an  
25 involuntary plaintiff, one would expect the FAC to be accompanied by a motion  
26 under Rule 19(a)(2). Max Sound has not made any such motion, and has made no  
27

1 showing that a “proper case” exists, as required by Rule 19(a)(2) in order to  
2 compel Vedanti to be joined as an involuntary plaintiff. If Max Sound desires that  
3 Vedanti be joined as an involuntary plaintiff, Max Sound should so state, and  
4 should follow the applicable procedures and allege the applicable facts.

5 If the FAC is not seeking to join Vedanti as an involuntary plaintiff, then  
6 Vedanti would seem to be a defendant. If Vedanti is a defendant, then Vedanti is  
7 entitled to know both what relief Max Sound is seeking against Vedanti and what  
8 factual basis Max Sound alleges to exist that would entitle Max Sound to such  
9 relief. Without knowing what it is the Max Sound asks of Vedanti, Vedanti cannot  
10 intelligently determine whether to file an answer admitting or denying the  
11 allegations of the FAC or to assert Rule 12(b)(6) or other motions.

12 For Vedanti to insist upon knowing whether it is a plaintiff or defendant is  
13 no idle matter. Among other things, the operation of Rule 13 as it affects Vedanti  
14 depends upon determining which of the other parties stand in an opposing party  
15 relationship to Vedanti and which are coparties. As against opposing parties,  
16 Vedanti may be obliged to state its counterclaims arising out of the same subject  
17 matters, but, against co-parties, Vedanti is not required to do so. *c.f.* Rule 13(a)(1)  
18 with Rule 13(g). Whatever the case may be, Max Sound should be required to  
19 state the caption and substance of its complaint in a fashion that properly indicates  
20 the role and alignment of the various parties.

21

22 **CONCLUSION**

23 For these reasons, Vedanti respectfully requests that the Court grant this  
24 motion for a more definite statement. Max Sound should be required to replead its  
25 complaint with the applicable details, as set out above.

1  
2 Dated: April 13, 2015  
3  
4

RUSS, AUGUST & KABAT  
Marc A. Fenster  
Matthew A. Rips  
Brian D. Ledahl

5 By: /s/ Marc A. Fenster  
6 Marc A. Fenster  
Attorneys for Defendant Vedanti  
Systems Limited

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

28 **VEDANTI SYSTEMS LIMITED'S MOTION FOR MORE DEFINITE  
STATEMENT**

## **CERTIFICATE OF SERVICE**

Pursuant to Local Rule 5.5, I hereby certify that on April 13, 2015, I caused the foregoing **MOTION FOR MORE DEFINITE STATEMENT; AND PROPOSED ORDER** to be electronically filed with the Clerk of the Court. I understand that the Court will provide electronic notification of and access to such filing to the counsel of record in this matter who are registered on the CM/ECF as listed below.

DATED: April 13, 2015

RUSS, AUGUST & KABAT

By: s Marc A. Fenster

Marc A. Fenster  
Attorneys for Defendant  
Vedanti Systems Limited

Matthew D. Davis  
Email: [mdavis@walkuplawoffice.com](mailto:mdavis@walkuplawoffice.com)  
Khaldoun Baghdadi  
Email: [kbaghdadi@walkuplawoffice.com](mailto:kbaghdadi@walkuplawoffice.com)  
Michael Albert Kelly  
Email: [mkelly@walkuplawoffice.com](mailto:mkelly@walkuplawoffice.com)  
WALKUP MELODIA KELLY & SCHOFIELD  
650 California Street, 26th Floor  
San Francisco, CA 94108-2702

Adam J. Levitt  
GRANT & EISENHOFER P.A.  
Email: [alevitt@gelaw.com](mailto:alevitt@gelaw.com)  
Catherine O'Suilleabhain  
Email: [cosuilleabhain@gelaw.com](mailto:cosuilleabhain@gelaw.com)  
Geoffrey C Jarvis  
Email: [gjarvis@gelaw.com](mailto:gjarvis@gelaw.com)

## **VEDANTI SYSTEMS LIMITED'S MOTION FOR MORE DEFINITE STATEMENT**

1 Jay W. Eisenhofer  
2 Email: [jeisenhofer@gelaw.com](mailto:jeisenhofer@gelaw.com)  
3 30 North LaSalle Street, Suite 1200  
Chicago, IL 60602

4 Deborah Elman  
5 Email: [delman@gelaw.com](mailto:delman@gelaw.com)  
GRANT AND EISENHOFER P.A.  
6 485 Lexington Ave, 29th Floor  
New York, NY 10017  
7

8 Brian Andrew Carpenter  
9 Email: [brian.carpenter@BJCIPlaw.com](mailto:brian.carpenter@BJCIPlaw.com)  
Christopher Michael Joe  
10 Email: [Chris.Joe@bjciplaw.com](mailto:Chris.Joe@bjciplaw.com)  
Eric William Buether  
11 Email: [eric.buether@bjciplaw.com](mailto:eric.buether@bjciplaw.com)  
Mark Davin Perantie  
12 Email: [mark.perantie@bjciplaw.com](mailto:mark.perantie@bjciplaw.com)  
BUETHER JOE & CARPENTER, LLC  
14 1700 Pacific Avenue, Suite 4750  
Dallas, TX 75201  
15

16 Counsel for Plaintiff Max Sound Corporation

17 Jennifer J. Schmidt  
18 Email: [jschmidt@wsgr.com](mailto:jschmidt@wsgr.com)  
Michael Jeffrey Guo  
19 Email: [mguo@wsgr.com](mailto:mguo@wsgr.com)  
Robin L. Brewer  
21 Email: [rbrewer@wsgr.com](mailto:rbrewer@wsgr.com)  
Stefani Elise Shanberg  
22 Email: [sshanberg@wsgr.com](mailto:sshanberg@wsgr.com)  
WILSON SONSINI GOODRICH & ROSATI, P.C.  
23 One Market Plaza  
24 Spear Tower, Suite 3300  
25 San Francisco, CA 94105

1 Counsel for Defendants Google, Inc., YouTube, LLC and ON2  
2 Technologies, Inc.